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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,
Plaintiff,
v.
Lino Anthony Guerrero,
Defendant.

No. CR-23-01756-001-TUC-RM (BGM)

REPORT AND RECOMMENDATION

Before the Court is Defendant Lino Anthony Guerrero's Motion to Suppress. (Doc. 12). Pursuant to Local Rule of Criminal Procedure 5.1, this matter was referred to Magistrate Judge Bruce G. Macdonald for a report and recommendation. The motion has been fully briefed and an evidentiary hearing on the motion has been held. (Docs. 26, 50, 53.) The Magistrate Judge recommends that the District Judge, after her independent review, deny Defendant's motion.

FACTUAL FINDINGS¹

The city of Douglas, Arizona, is situated on the United States/Mexico border in the southeastern part of the state. (Tr. 11:10-14;² Pl.'s Ex. 1.) State Route 80 extends northeast from Douglas and travels through the eastern New Mexico state line. (*Id.* 11:14-20.) The area along State Route 80 headed eastward toward New Mexico is desolate. (*Id.* 15:11-

¹ Evidence presented at a suppression hearing is viewed in the light most favorable to the government. *United States v. Sherman*, 430 F.2d 1402, 1404 (9th Cir. 1970).

² The abbreviation “Tr.” is used to designate the official transcript of the May 20, 2024 evidentiary hearing on Defendant’s motion to suppress.

1 12.) There are no gas stations, convenience stores, or anything for which an individual
 2 would travel there. (*Id.* 15:17-22.) Douglas' proximity to the border and low police
 3 presence make it a popular location for alien smuggling. (*Id.* 16:19-21.)

4 On October 21, 2023, during a pre-shift meeting, United States Border Patrol Agent
 5 Carl Petry learned that a vehicle previously involved in alien smuggling had passed through
 6 the Douglas Port of Entry headed northbound into the United States. (*Id.* 22:1-8.) United
 7 States Customs and Border Protection office of field operations relayed that a white Ford
 8 Expedition bearing an Illinois license plate had been used in prior smuggling attempts and
 9 that it believed it was going to be used again in another smuggling attempt. (*Id.* 22:5-8.)

10 After the meeting, Agent Petry conducted an independent records check, which
 11 revealed that a known "crossover"⁴ had driven the vehicle northbound across the border
 12 earlier that day. (*Id.* 23:3-5; 25:14-20.) Shortly thereafter, the same driver crossed in a
 13 different vehicle also heading northbound into the United States. (*Id.* 24:15-18.) Petry
 14 recognized this crossing activity as a common tactic among smuggling organizations, in
 15 which a driver brings a vehicle north across the border and leaves it at a preplanned location
 16 so another person can use the vehicle for smuggling. (*Id.* 24:19-25:1.) Petry testified that
 17 he was familiar with this tactic from his Border Patrol experience with smuggling
 18 organizations along the southern United States border. (*Id.* 12:18-25; 25:4-13.)

19 While performing a roving patrol later that night, Petry positioned his vehicle at
 20 mile marker 376 on State Route 80. (*Id.* 29:12-15.) Approximately 15 to 30 minutes later,
 21 he observed a white Ford Expedition traveling westbound toward Douglas. (*Id.* 30:14-16.)
 22 The Expedition matched the description of the vehicle discussed in the pre-shift meeting
 23 including its Illinois license plate number. (*Id.* 30:20-31:2.) Petry followed the Expedition
 24 and attempted an additional records check on the vehicle. (*Id.* 31:5-7.) While the records
 25 check was inconclusive, Petry noticed that the vehicle periodically drifted within its lane.
 26 (*Id.* 32:2-4.) Based on the pre-shift meeting information about a suspected white Ford

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 28 ⁴The term "crossover" refers to a person who drives vehicles across the United States/Mexico
 border for use in smuggling activities. (Tr. 28:5-8.)

1 Expedition engaged in alien smuggling, the information Petry gleaned from his own
2 independent investigation, and his ongoing observations of the vehicle, Petry conducted an
3 investigatory stop of the vehicle, which he initiated around 12:30 a.m. on October 22, 2023.
4 (*Id.* 33:19-24; 37:3.)

After Agent Petry stopped the vehicle, Defendant Guerrero, who was the Expedition's driver, caused confusion and concern by opening his car door and exiting the vehicle. (*Id.* 35:23-36:21.) Petry then commanded Guerrero to sit down. (*Id.* 38:13-14.) As Guerrero started to sit, Petry realized that the Expedition's engine was still running. (*Id.* 38:16-19.) Concerned that Guerrero might flee, Petry attempted to handcuff him, when Guerrero tensed his muscles, ignored Petry's commands, and ultimately fled on foot. (*Id.* 40:6-41:22.) After Guerrero fled the scene, Agent Petry discovered six undocumented citizens lying down in the middle and back of the Expedition. (*Id.* 42:17-20.) Roughly two hours later, agents apprehended and arrested Guerrero in the desert. (*Id.* 44:4-12.)

LEGAL STANDARD

The Fourth Amendment’s prohibition against unreasonable searches and seizures extends to brief investigatory stops. *United States v. Jimenez-Medina*, 173 F. 3d 752, 754 (9th Cir. 1999). Roving Border Patrol agents may conduct brief investigatory vehicle stops without violating the Fourth Amendment, “if the [agent’s] action is supported by reasonable suspicion to believe that criminal activity may be afoot.” *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). “Reasonable suspicion requires specific, articulable facts which, together with objective and reasonable inferences, form a basis for suspecting that a particular person is engaged in criminal conduct.” *United States v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000) (cleaned up).

25 The threshold to reach reasonable suspicion is not particularly high. *Valdes-Vega*,
26 738 F.3d at 1078. It is less than probable cause, and “falls considerably short of satisfying
27 a preponderance of evidence standard.” (*Id.*) (quoting *Arvizu*, 534 U.S. at 274). The
28 government bears the burden of showing that reasonable suspicion exists to conduct a

1 warrantless search. *United States v. Cervantes*, 703 F. 3d 1135, 1141 (9th Cir. 2012); *see*
 2 also 6 Wayne R. LaFave, Search and Seizure § 11.2(b) (6th ed. 2022). When making
 3 reasonable suspicion determinations, courts are to consider the “totality of the
 4 circumstances” of each case. *Arvizu*, 534 U.S. at 273.

5 DISCUSSION

6 Defendant Guerrero brings the motion at hand asserting that the Court should
 7 suppress the evidence found after his October 22, 2023 traffic stop because the Government
 8 did not have reasonable suspicion to stop him. (Doc. 12 at 1:20-22.) Guerrero asserts that
 9 Agent Petry stopped him based on an association with past criminal activity and proximity
 10 to the border and that these two factors, alone, are insufficient to establish reasonable
 11 suspicion. (*Id.* 7:6-8.) The Government asserts that Petry had reasonable suspicion to stop
 12 Guerrero based on the totality of the circumstances. (Doc. 26 at 4-8.) It notes that the area
 13 surrounding Douglas, Arizona, is known for alien smuggling; prior to his shift, Petry was
 14 advised to be on the lookout for the specific vehicle that Guerrero was driving; Petry
 15 conducted an independent investigation where he learned that the vehicle had crossed into
 16 the United States earlier that night; and that at the time of the vehicle’s stop, it lacked a
 17 registered owner and the driver was drifting within the lane. (*Id.* at 2, 7-8.) Viewing the
 18 evidence in the light most favorable to the Government, the Court concludes that Agent
 19 Petry had reasonable suspicion to conduct a brief investigatory stop of Guerrero’s vehicle,
 20 and it recommends that his motion to suppress be denied.

21 I. Government Demonstrates Reasonable Suspicion for Stop

22 When analyzing whether a Border Patrol agent had sufficient reasonable suspicion
 23 to conduct an investigatory stop, courts look at the totality of the circumstances, rather than
 24 reviewing factors in isolation. *Valdes-Vega*, 738 F.3d at 1078. Reasonable suspicion can
 25 also be based upon the collective knowledge of officers even if not all that information has
 26 been communicated to the arresting officer, *cf. United States v. Butler*, 74 F.3d 916, 921
 27 (9th Cir. 1996) (discussing probable cause), and a determination that reasonable suspicion
 28 exists need not rule out the possibility of innocent conduct, *Arvizu*, 534 U.S. at 277. In the

1 context of investigatory stops near the border, the totality of the circumstances may
 2 include: (i) characteristics of the area; (ii) proximity to the border; (iii) usual patterns of
 3 traffic and time of day; (iv) previous alien smuggling in the area; (v) behavior of the driver;
 4 (vi) appearance or behavior of the passengers; and (vi) model and appearance of the
 5 vehicle. *Valdes-Vega*, 738 F.3d at 1079. A “be-on-the-lookout” (BOLO) alert may also
 6 be considered in a reasonable suspicion analysis. *See, e.g., United States v. Haro*, No. 20-
 7 50354, 2021 WL 6101347, at *2 (9th Cir. Dec. 21, 2021) (ruling that a BOLO can be used
 8 to provide a particularized and objective basis for a stop); *United States v. Al Zoubani*, No.
 9 CR-21-111-001-TUC-SHR (LAB), 2022 WL 2800932, at *4 (D. Ariz. July 18, 2022)
 10 (“While not a dispositive factor, a BOLO alert is given some weight in the reasonable
 11 suspicion analysis.”). Not all of these factors must be present to justify reasonable
 12 suspicion, and the facts are to be filtered through the lens of the agent’s training and
 13 experience. *Valdes-Vega*, 738 F.3d at 1079.

14 At the evidentiary suppression hearing, the Government offered more than
 15 sufficient, unrefuted evidence that Agent Petry had a particularized and objective basis to
 16 suspect that Guerrero was engaged in illegal activity to stop his vehicle. *See United States*
 17 *v. Cotterman*, 709 F.3d 952, 968 (9th Cir. 2013) (cleaned up) (“Reasonable suspicion is
 18 defined as a particularized and objective basis for suspecting the particular person stopped
 19 of criminal activity.”). Prior to his shift, Petry was given a BOLO alert for a white Ford
 20 Expedition bearing a specific Illinois license plate, which had been previously used for
 21 alien smuggling. (Tr. 22:1-8; 23:1-2.) Petry conducted further research on the vehicle and
 22 discovered a suspicious crossing history which indicated that the vehicle may have been
 23 brought across the border for use in smuggling activities. (*Id.* 23:3-5; 24:15-25:1.) When
 24 Agent Petry encountered the vehicle later that night, it was traveling in a remote area known
 25 for alien smuggling, less than ten miles from the border. (*Id.* 15:16-19; 16:19-21; 29:13-
 26 15.) As Petry followed the vehicle, he observed it drifting within its lane. (*Id.* 32:2-4.)
 27 After attempting another records check, which failed to return vehicle owner information,
 28 Petry decided to conduct a brief investigatory stop of the vehicle. (*Id.* 31:7-10; 33:19-22.)

Guerrero either failed to effectively refute or conceded all of these facts at the evidentiary suppression hearing. (*See generally*, *id.* 46:16-58:3.) Accordingly, upon viewing the evidence in the light most favorable to the Government, and considering the totality of the circumstances, the Court concludes that Agent Petry had reasonable suspicion to conduct an investigatory stop of Guerrero.⁵

RECOMMENDATION

7 For the foregoing reasons, the Magistrate Judge recommends that the District Court
8 DENY Defendant's Motion to Suppress (Doc. 12). Pursuant to Federal Rule of Criminal
9 Procedure 59, any party may serve and file written objections within 14 days of being
10 served a copy of this Report and Recommendation. Fed. R. Crim. P. 59(b)(2). A party may
11 respond to the other party's objections within 14 days. LRCiv 7.2(c). No reply shall be
12 filed unless leave is granted by the District Court. If objections are filed, the following case
13 number should be used: **CR-23-01756-RM-1**. Failure to file timely objections to any
14 factual or legal determination of the Magistrate Judge may result in waiver of the right of
15 review. Fed. R. Crim. P. 59(b)(2).

17 Dated this 11th day of June, 2024.

Honorable Bruce G. Macdonald
United States Magistrate Judge

⁵ Because the Court concludes that Agent Petry had reasonable suspicion to conduct an investigatory stop of Defendant's vehicle, it declines to address any subsequent issues of abandonment.